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**DEVELOPMENT OF AMENDMENTS TO RULES AT 327 IAC 11 CONCERNING  
STATE ENVIRONMENTAL POLICY**

LSA Document #08-210

**Overview**

The Indiana Department of Environmental Management (IDEM) has developed draft rule language concerning implementation of Indiana law regarding environmental impact statements for major state actions that may significantly affect the quality of the human environment. This draft rule is to be presented to the Water Pollution Control Board (board) on February 11, 2009, for consideration of preliminary adoption.

**Citations Affected**

This rulemaking amends 327 IAC 11-1, repeals 327 IAC 11-2, and adds 327 IAC 11-3.

**Affected Persons**

These rule amendments apply to state agencies that are statutorily required to consider environmental impact in decisionmaking. The current rules at 327 IAC 11 apply specifically to Indiana state agencies that plan or engage in major state actions that may have a significant impact on the environment. Those rules were intended to provide guidance and specificity to state agencies by defining the scope of analysis to which a major state action undertaken by that agency must be subjected.

**Reason(s) for the Rule**

The purpose of this rulemaking is to define "major state action significantly affecting the quality of the human environment" as applied to IC 13-12-4-5 that requires all state agencies to use a systematic, interdisciplinary approach to ensure integration of natural and social sciences in planning and decisionmaking that may impact the environment. IC 13-12-4-5 requires all state agencies to identify and develop methods and procedures that will ensure that unquantified environmental amenities and values be given consideration along with economic and technological considerations in decisionmaking. Each state agency that plans or undertakes a major state action that significantly affects the quality of the environment is required to include a detailed statement by the responsible official that describes

the environmental impact, any unavoidable adverse effects to the environment, alternatives to the proposed action, the relationship between local short-term uses of the environment and the maintenance and enhancement of long-term productivity, and any irreversible and irretrievable commitments of resources that would be involved if the proposed action is implemented. The state agency proposing the action is required to consult with and obtain comments from each state agency that has jurisdiction or has special expertise regarding any potential environmental impact. Copies of the statement and the comments of appropriate federal, state, and local agencies that are authorized to develop and enforce environmental standards shall be made available to the governor and public and must accompany the proposal through the agency review process.

Under IC 13-12-4-5, the environmental boards are required to define in rules the actions that constitute a major state action significantly affecting the quality of the human environment.

IC 13-12-4-8 exempts state licensing and permitting actions from the requirement to develop an environmental impact statement. IC 13-12-4-10 excludes state agencies that are required to file a federal environmental impact statement under the National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321 et seq. (NEPA) from the state environmental impact statement requirement.

**Economic Impact of the Rule**

There is no fiscal impact to the regulated community with this rulemaking. These rules apply to state agencies that are statutorily required to consider environmental impact in decisionmaking. The actual fiscal impact of this rulemaking depends upon the size of the project for which environmental impacts are being measured as well as the extent of the environmental impact. Fiscal impacts would be measured in the number of full-time equivalents necessary to complete an environmental assessment

for each project.

### **Benefits of the Rule**

The current rules at 327 IAC 11 provide a checklist to aid state agencies in determining whether the state action they are contemplating does in fact significantly affect the environment. The current rules also mirror the statutory requirement that all state agencies prepare environmental impact statements for major state actions. The rules have not been beneficial in helping agencies decide whether the activity they may take is a major state action significantly affecting the quality of the human environment. IDEM wants to make the rules a useful tool for developing environmental impact statements that can aid in the decisionmaking process for major state actions.

### **Description of the Rulemaking Project**

Similar rulemakings are underway in the Office of Air Quality and Office of Land Quality for amending the rules under Titles 326 and 329, respectively, along with this rulemaking to amend rules in Title 327. The joint rulemaking effort got its initiation at the behest of the Water Pollution Control Board in December 2007 when the board questioned the likelihood of 327 IAC 11 being eliminated under the Sunset Law provisions of IC 13-14-9.5.

A joint stakeholder workgroup met twice in the summer of 2008 to discuss the existing rules for state environmental policy. The workgroup included representatives of the public, state agencies most affected by these rules, such as the Department of Transportation, and the Economic Development Corporation.

### **Scheduled Hearings**

First Public Hearing: February 11, 2009, at the WPCB meeting held at Indiana Government Center South, Indianapolis, Indiana.

### **Consideration of Factors Outlined in Indiana Code 13-14-8-4**

Indiana Code 13-14-8-4 requires that in adopting rules and establishing standards, the board shall take into account the following:

- 1) All existing physical conditions and the character of the area affected.
- 2) Past, present, and probable future uses of the area, including the character of the uses of surrounding areas.
- 3) Zoning classifications.
- 4) The nature of the existing air quality or existing

water quality, as appropriate.

5) Technical feasibility, including the quality conditions that could reasonably be achieved through coordinated control of all factors affecting the quality.

6) Economic reasonableness of measuring or reducing any particular type of pollution.

(7) The right of all persons to an environment sufficiently uncontaminated as not to be injurious to:

- (A) human, plant, animal, or aquatic life; or
- (B) the reasonable enjoyment of life and property.

### **Consistency with Federal Requirements**

The National Environmental Policy Act (NEPA) is comparable to Indiana statutory requirements for environmental impact statements. However, IC 13-12-4-10 provides that any state agency that is required by NEPA to file a federal environmental impact statement is not required to comply with the Indiana environmental impact statement requirements unless the action contemplated requires state legislation or state appropriations. As a result, NEPA would not apply to actions covered by this rule.

### **Rulemaking Process**

The first step in the rulemaking process is a first notice published in the Indiana Register. This includes a discussion of issues and opens a first comment period. The second notice is then published which contains the comments and the department's responses to comments from the first comment period and the draft rule. Notice of the first hearing on the rule is also published in the Indiana Register. The Water Pollution Control Board holds the first meeting/hearing and public comments are heard. The proposed rule, also known as the draft rule as preliminarily adopted, is published in the Indiana Register after preliminary adoption. If the proposed rule is substantively different from the draft rule, a third written comment period is required. After notice in the Indiana Register, the second public meeting/hearing is held and public comments are heard. Once final adoption occurs, the rule becomes effective 30 days after filing with the Legislative Services Agency.

### **IDEM Contact**

Additional information regarding this rulemaking action can be obtained from MaryAnn Stevens, Rules Development Branch, Office of Legal Counsel, (317) 232-8635 or Nancy King, Office of Legal Counsel, (317) 232-7694 or (800) 451-6027 (in Indiana).